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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/039,644	12/19/2001	Erika Lynn Hadeed		9283

7590 12/03/2004

Erika Lynn Hadeed
6302 Wendover Sourt
Fredericksburg, VA 22407-5061

EXAMINER

NGUYEN, BAO THUY L

ART UNIT	PAPER NUMBER
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1641

DATE MAILED: 12/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/039,644

Applicant(s)

HADEED, ERIKA LYNN

Examiner

Bao-Thuy L. Nguyen

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 October 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

1. Applicant's response filed 04 October 2004 has been received. Claims 1-6 are pending.
2. The text of those US Codes not found in this office action may be found in the previous office action.
3. The submission of a new ADS including the priority data is acknowledged.

Claim Rejections – 35 USC § 112, Second Paragraph

4. Claims 1-6 are rejected as failing to define the invention in the manner required by 35 U.S.C. 112, second paragraph. See the previous office action for a detailed explanation.

The claim(s) are narrative in form and replete with indefinite and functional or operational language. The structure which goes to make up the device must be clearly and positively specified. The structure must be organized and correlated in such a manner as to present a complete operative device. The claim(s) must be in one sentence form only. Note the format of the claims in the patent(s) cited.

Applicant request's for assistance in amending claim 1 to better define the invention is acknowledged. The following amendment is suggested:

Claim 1 An analytical device comprising:

- a) a first absorbent material;
- b) a second absorbent material;
- c) a membrane immunoassay having a first end and a second end comprising at least one immobilized reagent that forms a visible reaction complex indicating the presence of an analyte in a fluid and a porous carrier that wicks aqueous fluid;

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d) a support means, wherein said membrane immunoassay is arranged on and attached to said support means; and said first end of said membrane immunoassay is in fluid flow contact with said first absorbent material, and said second end of said membrane immunoassay is in fluid flow contact with said second absorbent material; and

e) a casing comprising:

an upper and a lower chambers attached together by at least one turning joint;
and at least one latch comprising a latch holder attached to said lower chamber, and a latch release grip attached to said upper chamber;

a fluid constriction flange;

a channel that is the size of or larger than said first absorbent material and said support means; wherein said support means comprising said membrane immunoassay and said porous carrier is disposed in said channel;

a viewing area;

f) a cap having an opened end and a closed end, providing a cover for said first absorbent material and forming a tight fit with said casing.

Claim Rejections - 35 USC § 103

1. Claims 1-6 are rejected under 35 USC 103(a) as being unpatentable over Lee (US 6,514,769 B2) in view of Chandler et al (US 5,877,028) for reasons of record in the previous office action.

Response to Arguments

2. Applicant's arguments submitted 04 October 2004 have been fully considered but are not persuasive.

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Applicant argues that a strained interpretation of the references was made and could only be made in hindsight since each reference is complete and functional in itself and lacks any reason to use parts from the other. Applicant also argues that the instant invention demonstrates a superior invention that anticipates the need for changing the test strips and cleaning the casing by providing a feasible design that employs a latch, turning join, and related parts.

These arguments are not persuasive. Lee teaches the same device disclosed in the instant invention. Lee specifically teaches a device comprising a housing that comprises a base and a cover. Lee teaches that the housing may be opened to permit substitution of different test strips to allow each device to be customized for detection of specific analytes. See column 2, lines 31-36 and column 9, lines 21-39.

Chandler teaches that opposable components joined by hinges and latches are conventional and well known in the art. Therefore, one skilled in the art would have been motivated, and would have had a reasonable expectation of success in modifying the device of Lee by including the hinges and latches of Chandler to facilitate easy access to the interior of the housing for replacing the test strip.

The argument that the instant invention is superior to those in the prior art is not persuasive because no data has been presented to support this assertion.

Since each and every limitation of the claimed invention is specifically disclosed and taught by the prior art of record and since all arguments have been fully addressed, the claims have been determined to be obvious over the prior art of record. No claim is allowed.

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Conclusion

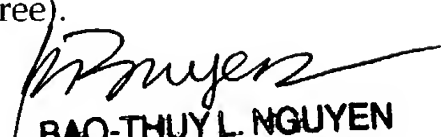
5. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bao-Thuy L. Nguyen whose telephone number is (571) 272-0824. The examiner can normally be reached on Tuesday and Thursday from 8:00 a.m. -3:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Long V. Le can be reached on (571) 272-0823. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


BAO-THUY L. NGUYEN
PRIMARY EXAMINER

11/18/04